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C O N F I D E N T I A L SECTION 01 OF 02 KUWAIT 005001

SIPDIS

STATE/EB/ESC/TFS FOR NROTHSTEIN; STATE/EB:ABORG/BFITZGERALD
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TAGS: [EFIN](#) [EAID](#) [ETTC](#) [PTER](#) [PREL](#) [KU](#) [IZ](#) [UNSC](#)

SUBJECT: FROZEN IRAQI ASSETS: OFAC/STATE VISIT TO KUWAIT

REF: KUWAIT 4840

Classified By: AMBASSADOR RICHARD JONES FOR REASONS 1.5(B) and (D)

[11.](#) (C) SUMMARY. A delegation from Treasury's Office of Foreign Assets Control (OFAC) and a State Department representative met with Kuwaiti officials on October 3-5 to discuss, among other things, some \$85 million in frozen Iraqi assets held by the Nassau, Bahamas branch of the Commercial Bank of Kuwait which have not been transferred to the Development Fund for Iraq (DFI), as required under UNSCR

[1483.](#) This cable is the second of two on the visit (terrorist financing developments are reported refel). The Ministers of Finance and Foreign Affairs referred the delegation to the Central Bank (CBK) as the GOK action agency for these issues. The Deputy Governor of the Central Bank said all Kuwaiti banks had been advised of their responsibility to transfer to DFI all assets not under court order or currently in litigation. The banks must notify CBK of any assets that are not transferred, and provide justification as to why they are being held. The CBK will review with each bank what assets have been transferred and what have not. Bank officials stressed that they would like to "close the chapter" on the issue of Iraqi assets by year's end, but that it is more complicated to do so in Kuwait than in other GCC countries because of Iraq's sizeable debts to Kuwaiti banks. END SUMMARY

[12.](#) (U) An OFAC delegation and State representative traveled to Kuwait on October 3-5 to speak with Kuwaiti officials regarding terrorist financing issues and the status of blocked Iraqi assets held by Kuwaiti banks. This cable, the second of two on the visit, reports on frozen Iraqi assets. Efforts to combat terrorist financing and the issue of the GOK's will to enforce UNSCRs are reported refel. The delegation, led by OFAC Director Richard Newcomb and accompanied by the Ambassador, included Mark Roberts, Daniel Yorks, and Jason Beal from OFAC; and Nicole Rothstein from EB/ESC/TFS; EconOff attended as notetaker. The delegation raised with the Ministers of Finance and Foreign Affairs and the Deputy Governor of the Central Bank of Kuwait (CBK) the issue of \$85 million in blocked Iraqi assets that are currently held in the Nassau, Bahamas branch of the Commercial Bank of Kuwait, and against which two Kuwaiti financial institutions have filed attachments in court. These funds have not been transferred to the Development Fund for Iraq (DFI) as required under UNSCR 1483. The funds were previously managed by the New York branch of the Commercial Bank. However, the New York branch in the process of closing and the Commercial Bank has transferred management of those funds back to its head office in Kuwait. Although it remains unclear under whose jurisdiction these deposits fall -- Kuwait, the Bahamas, or the United States --, according to the Treasury the USG believes it might have a claim. Nevertheless, the delegation wanted to speak with GOK officials to see if they would agree to transfer the funds in accordance with UNSCR 1483. When presented with this, both the Minister of Finance and the Minister of Foreign Affairs referred the delegation to CBK for a response.

[13.](#) (C) The Central Bank's Deputy Governor, Dr. Nabeel Ahmed Al-Mannae, confirmed that CBK had received a copy of UNSCR 1483 mandating the transfer of frozen Iraqi assets to DFI, and had circulated that to all banks. However, he noted that the resolution also stipulates that funds subject to prior judicial action are exempted from the transfer order. Accordingly, CBK informed all Kuwaiti banks that any assets not currently being litigated or already subject to a court order must be transferred to a special account at CBK for onward transfer to DFI. In the case where Iraqi assets under court orders were present, the banks were instructed to specify the claim and report it to CBK. Newcomb noted that there are no specific attachments against the funds in Nassau, only general claims. Newcomb emphasized that Kuwait had an obligation under UNSCR 1483 (paragraph 23) to order the transfer of the funds to the DFI. Al-Mannae said the CBK has asked the Ministry of Foreign Affairs to establish a joint committee with Bank officials and CBK's legal advisor to review all of these claims. At present, CBK has not determined if it has the authority to force individual banks to transfer funds that are under court orders.

14. (C) CBK Executive Director Ibrahim Alqadhi stressed that the Kuwaitis want to "close the chapter" on Iraqi assets, and hope to do so by year's end. But he said that this is not as simple in Kuwait as in other GCC countries, because of the Government of Iraq's liabilities to Kuwaiti banks. Newcomb noted that many countries have claims on Iraqi funds, and that Iraq owes US banks alone billions of dollars; he also commented that the US arguably has jurisdiction to force these transfers. Alqadhi clarified that he was not necessarily defending the Kuwaiti banks' claims, but that their position must be understood from this perspective. He underscored that CBK is not concerned (as the claimant banks are) with shareholders, interests but is concerned with compliance issues, implying that it would be easier for the CBK to compel the banks to make the transfers than it would for the banks to do it of their own volition.

15. (C) Al-Mannae promised the delegation that the CBK would call each bank to see what their case is for attaching those assets; he would then inform the UN of amounts transferred or, if not transferred, provide the banks, justifications. At the Ambassador's urging, the CBK officials agreed to begin their investigation with those banks claiming the \$85 million being held in the Bahamas. Newcomb asked CBK for an answer within two weeks of the meeting date. No answer has been received, however CBK and OFAC have remained in contact on this issue.

16. (U) The State/OFAC delegation cleared this cable after their return to Washington.
JONES